

**IN THE COURT OF SH. KISHOR KUMAR, DISTRICT
JUDGE-04, NORTH DISTRICT, ROHINI COURTS, DELHI.**

CS No. 53/2021
CNR No: DLNT01-000522-2021

Santosh Sharma

..... Plaintiff

VERSUS

Sushma Arora & Ors.

.....Defendants

Order/21.11.2024

1. Vide this order I shall dispose of the application under Order XII Rule 6 CPC read with Section 151 CPC, filed on behalf of the plaintiff for passing part decree of declaration of ownership of the suit property.

2. The facts, in brief for the purpose of present application are that plaintiff has filed the present suit for declaration, possession, cancellation, injunction and damages/mesne profits with respect to immovable property admeasuring 135 sq yds at Khasra No.409, Malikpur Chhawani, Delhi-110033 (also known as 1, GT Karnal Road, New Delhi-110033) inter alia stating that defendants no.4 to 8 got the said property mutated in their favour

by disclosing falsely themselves to be owner of the said property, however, the said mutation order was set aside by the competent authority vide order dated 25.08.2000. It is further stated that in the year 2020 the defendants no.4 to 8 unlawfully alienated parts of the property in their illegal occupation to defendants no.1 to 3 and now the defendants no.1 to 3 are in illegal occupation of the suit property. It is further stated that plaintiff, in the month of August 2020, through her sons, requested the defendant no.1 to 3 to vacate the suit property, but the defendants absolutely denied the claim of the plaintiff. The suit property is in illegal occupation of defendants no.1 to 3.

3. The defendants filed written statement wherein it is inter alia averred that plaintiff has never been in the ownership or possession of the suit property and has been residing away from the suit property ever since her marriage in the year 1964-1965 and has throughout been aware of the factum of the possession and ownership of the subject land vesting in late Sh. Vijay Kumar Sharma and defendants. It is further stated that plaintiff has also been aware of the adverse possession and ownership of the suit property since 1982. It is stated on behalf of the defendants that the plaintiff has no right, title or interest in the suit property and has no locus standi to lay any claims and defendants have continued in the possession and occupation of the suit property and are the owner of the same through adverse

possession.

4. In view of the pleadings and admissions by the defendants side in the written statement, the plaintiff has moved application under Order XII Rule 6 CPC wherein it is stated that defendant no.4, 6 and 8 in para no.11 of preliminary objections and para no.24 and 26 of parawise reply admitted their adverse possession qua the suit property. It is stated that these admissions of the defendants indirectly and constructively have accepted the plaintiff as owner of the suit property and, therefore, defendants made implied admission that the plaintiff is the owner of the suit property and defendants are in the adverse possession of the same.

5. In reply to the present application, it is stated by the defendants that there is no clear and unequivocal admission on the part of the defendants. It is further stated that plaintiff neither has title nor even remained in possession of the suit property and the present application deserves to be dismissed with cost.

6. I have heard the learned counsels for the parties and have carefully gone through the material on record. The written submissions filed on behalf of the plaintiff have also been gone through.

7. At this stage, it would be fruitful to refer to Order XII Rule 6 of the Code of Civil Procedure which provides as under :-

“6. Judgment on admission. - (1) Where admissions of fact have been made either in the *pleading or otherwise, whether orally or in writing*, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or given such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule(1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

8. The main contention of the plaintiff is that defendants have stated in their written statement that they are in adverse possession of the suit property and thereby admitted the ownership of plaintiff, therefore, there is clear and unambiguous admission on the part of the defendants that plaintiff is the owner of the suit property.

9. The law relating to applicability of Order XII Rule 6 CPC is well settled that it is a discretionary relief and the Court has to exercise discretion in a judicious and circumspective manner. The Hon’ble Delhi High Court in **Joginder Singh Lakra Vs. BSES Rajdhani Power Ltd., in CRP 51/2023**, while referring to the judgment of the Hon’ble Supreme Court in **Hari Steel and General Industries Ltd. & Anr. Vs. Daljeet Singh & Ors.,**

(2019)20 SCC 425, held

“25. in the judgment in Himani Alloys Ltd. vs. Tata Steel Ltd., (2011) 15 SCC 273, nature and scope of Order XII Rule 6 CPC has been considered. In the aforesaid judgment this Court has held that the discretion under Order XII Rule 6 CPC is to be exercised judiciously, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant. Para 11 of judgment read as under:

“It is true that a judgment can be given on an admission contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order XII Rule 6 CPC being an enabling provision, it is neither mandatory nor peremptory but discretionary. The Court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short, the discretion should be used only when there is a clear admission which can be acted upon.”

10. Further in **Raj Kumar Chawla Vs. Lucas Indian Service, (2006) 129 DLT 755**, their Lordships held -

“it is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather a matter of discretion of a Court. Where a defendant raised a objection which will go very root of the case, it would not be appropriate to exercise this discretion. The use of the words ‘may’ and, ‘makes such orders’ or ‘give such judgment’ spells out that powers under these Rules are discretionary and use of discretion would have to be controlled in accordance with the non-judicial canons.

The cases which involves questions to be decided upon the regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions.

11. Now adverting back to the facts of present case, after perusal of written statement filed on behalf of defendants no.4, 6 and 8, it is found that there is no such admission on the part of defendant. Further, in the written statement as well as in reply to the present application, it is the contention of the defendants that plaintiff has never been in the ownership or possession of the suit property and has been residing away from the suit property ever since her marriage in the year 1964-1965. It is stated on behalf of the defendants that the plaintiff has no right, title or interest in the suit property and has no locus standi to lay any claims and defendants have continued in the possession and occupation of the suit property.

12. Now, coming to the ground taken by the plaintiff that defendants have admitted the ownership of plaintiff by claiming to be owner of suit property by way of adverse possession. In this context, there are certain conditions which are to be looked into while deciding the plea of adverse possession i.e. (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination

of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter. In this view of the matter, I am of the considered view that the plea raised on behalf of the defendants as to adverse possession cannot be considered as admission that plaintiff is the owner of suit property since it requires to be proved by leading cogent evidence and is a matter of trial. In these circumstances, it cannot be said that there is clear and unambiguous admission on the part of defendants which is a conscious and deliberate act of the defendant and the objection raised by the defendants would go to the very root of the case.

13. It is pertinent to mention here that a specific issue i.e. issue no.6 has been framed by the Court with regard to the fact that whether the defendants are owner of the suit property by way of adverse possession. Therefore, it is now for both the parties to prove their respective case by leading cogent evidence. The plaintiff would get sufficient opportunity to adduce relevant evidence in support of her claim and would also get opportunity to cross examine the witnesses to be produced on behalf of the defendants on all such material aspects including the contentions raised by way of present application. Thus, looking into the plea raised on behalf of the plaintiff and the reply thereof by the defendants, it cannot be considered as admission on the part of defendant and controversy in question requires trial by way of

cogent evidence.

14. In view of my above discussion, the present application under Order XII Rule 6 CPC, filed on behalf of the plaintiff is hereby dismissed.

Announced in Open Court

On Dated 21.11.2024.

(Kishor Kumar)
DJ-04, North, Rohini Courts,
Delhi/21.11.2024